83-410

No.

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IN THE

Supreme Court of the United States

October Term, 1983

JUNE ROTH,

Petitioner,

against

NATHAN PRITIKIN and PATRICK M. McGRADY, JR.,
Respondents.

Petition for a Writ of Certiorari to United States Circuit Court of Appeals for the Second Circuit

---

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Questions Presented.

Whether the provisions of the Copyright Act of 1976, which came into effect on January 1, 1978, apply to a copyright application made on June 6, 1979, for a book which was contracted for in September, 1977.

Whether the presumption, that the person who hired an author in 1977 to do a book to be thereafter copyrighted was entitled to the copyright, could be constitutionally overthrown by a statute which came into force and effect on January 1, 1978.

Whether an agreement to do a literary work for a person who hires an author, which agreement makes no mention of a copyright, carries with it a property right to a copyright.

Whether an agreement, made in 1977, was enforceable to transfer title to recipes in 1977, when the quantity of recipes was not agreed upon or settled until July, 1978.

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IN THE

SUPREME COURT OF THE STATE OF NEW YORK

October Term 1983.

No.

JUNE ROTH,

Petitioner,

v.

NATHAN PRITIKIN and PATRICK M. MCGRADY, Jr.,

Respondents.

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

June Roth, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on June 20, 1983.

Opinions Below.

The opinion dated June 20, 1983 of the Court of Appeals for the Second Circuit whose judgment is herein sought to be reviewed is reprinted in the appendix hereto attached beginning at page A-1; it appears at 710 F.2d 934.

The opinion of the United States District Court for the Southern District of New York is also reprinted and appears in the appendix commencing at page A-14.

Jurisdiction.

The judgment of the Court of Appeals for the Second Circuit was entered on June 20, 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

Constitutional Provision Involved.

Article 1, Section 8, Clause 8, which empowers Congress

> "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;"

Statutes Involved.

U.S.C. Title 17, Section 101(1) (2)

> A "useful article" is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a "useful article".
>
> The author's "widow" or "widower" is the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried.
>
> A "work of the United States Government" is a work prepared by an officer or employee of the

United States Government as part of that person's official duties.

A "work made for hire" is—

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or comissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

U.S.C. Title 17, Section 201(b)

(b) Works Made for Hire.—In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

U.S.C. Title 17, Section 202

Ownership of copyright as distinct from ownership of material object

Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work

is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.
Pub.L. 94-553, Title I, §101, Oct. 19, 1976, 90 Stat. 2568.

U.S.C. Title 17, Section 301(a)

Preemption with respect to other laws

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

U.S.C. Title 17, Section 302(a) and (b)

Duration of copyright: Works created on or after January 1, 1978

(a) In General.—Copyright in a work created on or after January 1, 1978, subsists from its creation

and, except as provided by the following subsections, endures for a term consisting of the life of the author and fifty years after the author's death.

(b) Joint Works.—In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and fifty years after such last surviving author's death.

U.S.C. Title 17, Section 303

Duration of copyright: Works created but not published or copyrighted before January 1, 1978

Copyrigfht in a work created before January 1, 1978, but not theretofore in the public domain or copyrighted, subsists from January 1, 1978, and endures for the term provided by section 302. In no case, however, shall the term of copyright in such a work expire before December 31, 2002; and, if the work is published on or before December 31, 2002, the term of copyright shall not expire before December 31, 2027.

Statement of the Case.

This is an action for a declaratory judgment that petitioner is the owner of one-third of the copyright of a book. Federal jurisdiction in the United States District Court was based on 28 USC 1338 (Copyright Act) and 28 USC 1332 (diversity and claim in excess of $10,000).

The respondent McGrady, a free lance journalist, visited in 1976 a "Longevity Center" run by respondent

Pritikin in Santa Barbara, California. Pritikin was not a physician, had earned no degrees at any university and had no training in nutrition (Joint Appendix, 147). Nevertheless, his center offered treatment, based upon his diet and exercise plan, for persons suffering from a variety of physical afflictions.

In 1976, Pritikin and McGrady entered into an agreement, pursuant to which McGrady was primarily responsible for writing the book, *The Pritikin Program for Diet & Exercise,* with Pritikin lending his name and expertise. Publication and distribution rights were sold to Grosset & Dunlop.

It was undisputed that recipes are the most important part of a diet book. One may read the text, but it is the recipes to which interested parties keep turning. Because the Pritikin Diet suggested sweeping changes in eating habits and even respondent McGrady characterized the food Pritikin served as "rabbit food, this is dreadful stuff" (J.A. 219), there ensued a difficult task of making the program palatable.

To that end, McGrady finally approached petitioner, June Roth. She is a free-lance journalist with expertise, developed over a period in excess of 20 years, in creating recipes and articulating them. Petitioner has an undergraduate degree in journalism with a master of science degree in biochemistry, clinical nutrition. She authored over 30 books on food and, at the time of trial, did a syndicated newspaper column in about 40 newspapers, reaching 35 million readers a week.

Petitioner also writes for magazines. At the time of the trial she was the president of the American Society of

Journalism and Authors and had been the recipient of significant awards for books in her field.

Her recognition arose from her integrity and realization that the writing of recipes is a creative art which demonstrates how a diet may work. Petitioner explained that ingredients cost a great deal of money, and thus her recipes had to be written in a manner that readers could follow clearly and dependably with no waste of food (J.A. 52).

McGrady telephoned petitioner in August of 1977 and asked whether she would be interested in doing the recipes for the book. He told her then that the idea of recipes had just occurred to him. That was not true; he had already spoken to several people to do the recipes and he had found them unsatisfactory.

Petitioner and McGrady met on August 30, 1977, at which time he told petitioner that he was under tremendous financial pressure because he could not pay his rent and was under threat of being dispossesed. He reported that the publisher had refused him an advance.

He also told petitioner that he had submitted a manuscript to Dial Press in the spring of 1977, in connection with a book called *Making Love Talk*. The manuscript was rejected and funds he had counted on to extricate himself from his financial difficulties were not forthcoming. Accordingly, he pressed petitioner to accept the obligation and "please hurry up and do the recipes so I can turn them in" and get money from the publisher (J.A. 283, 284).

Petitioner agreed to help. When she asked McGrady at that meeting about the advances he received, he said he

could not tell her. Realizing that the explication of the Pritikin theories might require a hundred or more recipes, petitioner said she needed an advance of $3,000 to cover the work and she wanted a portion of the royalties for her services. McGrady said he would have to discuss the matter with Pritikin.

The courts below found, on the basis of McGrady's testimony and a letter dated September 16, 1977 (Ex. A), which he says he wrote, but which petitioner never received, that they agreed for petitioner to furnish the recipes for a flat fee of $3,000.

At McGrady's request, petitioner worked on the manuscript of the recipes from morning until midnight and weekends until she completed the initial recipes and delivered them to McGrady on October 4, 1977. McGrady rushed them to the publisher without studying them. He received an advance, out of which he paid petitioner $1,000, holding back the remainder with the question "Would you take milk out of my children's mouth?" (J.A. 39).

Another "batch" of recipes was delivered in June of 1978 and still a third in July, 1978 (J.A. 272). During the same period, petitioner was putting some of Pritikin's garbled existing recipes into "cookbookese."

Right from the beginning, petitioner claims she "nagged" McGrady about fixing her portion of royalties. At one period, his father became ill and then died. After a respectable period, petitioner again approached McGrady. On each occasion, he put petitioner off by saying he had to talk to Pritikin. He never did.

Upon the delivery by petitioner of her last recipes and the corrected Pritikin recipes in July, 1978, the book was completed and its first publication was June 15, 1978. The application for copyright was filed on June 6, 1979, and it was taken in the names of respondents, Pritikin and McGrady.

No mention was made in the copyright application that any part of the book was a "work for hire" (Ex. B hereto annexed).

The courts below found that petitioner and respondents entered into an agreement prior to January 1, 1978, for petitioner to deliver recipes for inclusion in the book; that, as a result of that contract, the right to copyright petitioner's recipes passed to respondents, and that accordingly, the Copyright Act which went into force and effect on January 1, 1978, did not govern the issues, although the application for the copyright was not made until June 28, 1979.

Reasons for Granting the Writ.

I.

The decision below conflicts with applicable decisions of this Court and has created principles of copyright law which merge the property right in a book with the copyright, contrary to the nature and essence of copyright.

In deciding that since petitioner entered into an agreement to deliver the recipes prior to January 1, 1978, the effective date of the new Copyright Act, the Court of Appeals also decided she transferred to the respondents her property interest in the recipes and this effected a transfer to them of the right to copyright her recipes.

In doing so, the Court of Appeals decided the case directly contrary to a long line of cases which distinguish the property interest in a work from the copyright interest. This Court, since at least 1834, has held that the property interest in a work is different from the copyright, and that Congress has the absolute right to apply conditions to the granting of a copyright which must be met.

In *Wheaton v. Peters*, 33 U.S. 591, 657, 8 Pet. 591, 8 L.Ed. 1055, this Court held:

> "That an author at common law, has a property in his manuscript, and may obtain redress against any one who deprives him of it, or by improperly obtaining a copy, endeavors to realize a profit by its publication, cannot be doubted; but this is a very different right from that which asserts a perpetual and exclusive property in the future publication of the work after the author shall have published it to the world.
>
> * * *
>
> (Page 663, 664). "This right, as has been shown, does not exist at common law—it originated, if at all, under the acts of congress. No one can deny, that when the legislature are about to vest an exclusive right in an author or an inventor, they have the power to prescribe the conditions on which such right shall be enjoyed; and that no one can avail himself of such right who does not substantially comply with the requisitions of the law.
>
> * * *

> (Page 665). "All the conditions are important; the law requires them to be performed; and, consequently, their performance is essential to a perfect title."

To the same effect is *American Tobacco Co. v. Werckmeister*, 207 U.S. 284, 294, 28 S.Ct. 72, 52 L.Ed. 208 (1907), where the Court referred to Lord Mansfield's characterization of a copyright as "a property in notion, and has no corporaal tangible substance," and also stated:

> ". . . the statute must be read in the light of the intention of Congress to protect this intangible right as a reward of the incentive genius that has produced the work."

In order to protect and reward authors, Congress has continued and codified the idea that ownership in the work to be copyrighted is different from ownership of the future right to reproduce which is the essence of copyright. Title 17, §202, specifically states:

> "Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied."

In no version of the arrangement between the parties offered by the respondents is the slightest suggestion that petitioner transferred the right to copyright to them, not even in the letter which respondent McGrady offered, which the Court of Appeals stated was "his version of the agreement" (Exhibit A).

Accordingly, it was entirely gratuitous for Judge Kaufman to state (710 F.2d 939) that "a subsequently enacted statute which purported to divest Pritikin and McGrady of their interest in the copyright by invalidating the 1977 agreement could be viewed as an unconstitutional taking."

Respondents had no interest as such in the copyright when the new statute came into effect on January 1, 1978. All that existed at that time, so far as respondents were concerned, was a rebuttable presumption of copyright in their favor. Assuming the satisfaction of all the conditions precedent to the acquisition by an individual contractor of the right to copyright prior to the actual issuing of a copyright, he would have only a rebuttable presumption to a copyright. A clear exposition of this rule appears in *Scherr v. Universal Match Corporation*, 417 F.2d 497, 500 (2 Cir., 1969), where the Court of Appeals held with respect to the law as it existed prior to January 1, 1978:

> " 'Authors and proprietors', according to §9 of the Copyright Law, 17 U.S.C. §9, are entitled to the copyright of a work of art. By §26, 17 U.S.C. §26, an 'author' is further defined to include 'an employer in the case of works made for hire.' This is not to say, however, as the literal language of the statute might imply, that an employer and an employee are precluded as a matter of law from agreeing that the copyright in the resulting work shall vest in the employee. See, generally, Nimmer, Copyright §62.1 (1968). Rather, §26 merely creates a rebuttable presumption of copyright in the employer, a presumption which can be overcome by evidence of a contrary agreement between the parties. *Id., Brattleboro Publishing Co. v. Winmill*

> *Publishing Corp.*, 369 F.2d 565, 567-568 (2 Cir. 1966) (Kaufman, J.); *Yardley v. Houghton Mifflin Co.*, 108 F.2d 28 (2 Cir. 1939), cert. denied, 309 U.S. 686, 60 S.Ct. 891, 84 L.Ed. 1029 (1940) (presumption rests upon presumed intention of parties); *Kinelow Publishing Co. v. Photography in Business, Inc.*, 270 F.Supp. 851 (SDNY 1967). But see in *Brattleboro, supra* at 569 (concurring opinion, Lumbard, Ch. J.) (no rebuttable presumption to be overcome—intention of parties controlling)."

Since Congress has the power "to prescribe the conditions on which such right (to copyright) shall be enjoyed" (*Wheaton v. Peters*, 33 U.S. 591, 664, 8 Pet. 591, 664, 8 L. Ed. 1055), Congress changed the presumption in the new Act. Where an author is not in another's employ, the work is not a work for hire now unless it is (17 U.S.C. §201[b][2]):

> "a work specifically ordered or commissioned for use as a contribution to a collective work . . . if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire."

There was no such writing.

There is no property right in the kind of presumption enjoyed by respondent. *U.S. v. Provident Trust Co.*, 291 U.S. 272, 54 S.Ct. 389, 78 L.Ed. 793, cited *Lincoln v. French*, 105 U.S. 614, 616, 617, and quoted with respect to presumptions:

> "No conclusive character attaches to them. They may always be rebutted and overthrown."

The reluctance of the courts below to disregard the earlier presumption obviously stemmed from their confusing the presumption with rules of substantive law. Else there was no reason for the Court of Appeals to state, as it did, "An interest in a copyright is a property right protected by the due process and just compensation clauses of the Constitution."

Respondents had no copyright when the new Act went into effect. The presumption was not the equivalent of a property right. As Mr. Justice Sutherland stated for this Court in *Heiner v. Donnan*, 285 U.S. 312, 329, 52 S.Ct. 358, 78 L.Ed. 772:

> "A rebuttable presumption clearly is a rule of evidence which has the effect of shifting the burden of proof, *Molule, J & K. C.R. Co. v. Turnipreed*, 219 U.S. 35, 43; and it is hard to see how a statutory rebuttable presumption is turned from a rule of evidence into a rule of substantive law as the result of a later statute making it conclusive."

It is even more difficult to see how a statutory rebuttable presumption is turned into a rule of substantive law as the result of a later statute which overthrows it.

In applying the new statute to the facts, there would be no retrospective application. The application for the copyright was made on June 6, 1979, a year and a half after the statute came into effect. In deciding that applying the statute would be retrospective, the courts overlooked the basic principle that copyright is a monopoly which may be achieved only if the conditions set by Congress are met.

This Court stated in *FHA v. The Darlington, Inc.*, 358 U.S. 84, 89-91, 92-93, 79 S.Ct. 141, 3 L.Ed. 2d 132:

> ". . . those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end."

And in *Fleming v. Rhodes*, 331 U.S. 100, 107, 91 L.Ed. 1368, 1373, 67 S.Ct. 1140, it was said:

> "Immunity from federal regulation is not gained through forehand contracts."

The control of the copyright scheme is specifically given by Congress by Article 1, Section 8, Clause 8, which empowers Congress

> "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;"

The decision of the Court of Appeals negates entirely the statutory scheme of joint ownership of copyrights.

> "A copyright is of statutory origin and can be obtained only in the manner pointed out by the statute which prescribes the conditions under which a copyright may be obtained" (18 Am. Jur. 2d, Copyright and Literary Property, §54; *Silverman v. Sunrise Pictures Corp.*, 273 F. 909, 2 Cir., 1921).

The statute has always demanded that common-law rights be abandoned when copyright is obtained.

> "Common-law literary property rights, including motion picture rights, are abandoned or extinguished when the owner of the work obtains a copyright for his literary production under the federal statutes; . . . (18 Am. Jur. 2d, Copyright and Literary Property, §84, p. 374, citing cases)."

By preempting all legal and equitable rights with respect to copyrights (17 U.S.C. §301[a]), Congress was doing no more than regulating what it had the right to regulate. By no stretch of the imagination could there be found anything in the contract, which the District Court found to exist between the parties, which could result in characterizing the application of the new Act as retrospective.

The Court may take judicial notice that books are often years in the writing after contracts have been signed. The application of the new statute to contracts made before its effective date will be a recurring problem. If the decision of the Second Circuit Court of Appeals in the case is permitted to persist, the perception that copyright, the right to reproduce in the future, is different from the right to own, will be extinguished and significant portions of the new statute rendered meaningless.

In sum, what the decisions below accomplish is to grant to respondents a copyright, which is given an extended life under the new Act (Title 17, §5, 302, 303), and to hold that the other provisions of the Act do not apply to respondents.

II.

The court below created a contract when there was none.

The parties did not agree until July of 1978 on the quantity of recipes which petitioner was to create and deliver.

It is essential to a contract for goods or services that the quantity be agreed upon. No such agreement took place in the case at bar. The contract was vague and indefinite.

The law in New York is clear. If an essential element of a contract is left open for future negotiations, there is no enforceable agreement (*St. Regis Paper Co. v. Hubbs & Hastings Co.*, 235 N.Y. 30, 36 [1923]). The federal courts have uniformly given recognition to the aspect of New York law which requires the quantity of the subject of a contract to be fixed or ascertainable without further negotiations. In *T.A. Corp. v. Kalso Systemet, Inc.*, 568 F.2d 145, 147 (10 Cir., 1977), the Court said:

> "The January 29 meeting occurred in New York City, and it is agreed that New York contract law applies. The New York law of contracts requires a meeting of the mind on all essential terms of a contract. *Ansorge v. Kane*, 244 N.Y. 395, 155 N.E. 683, 684 (1927). A term is 'essential' if it seriously affects the rights and obligations of the parties. *Ginsberg Machine Co., Inc. v. J. & H. Label Processing Corp.*, 341 F.2d 825, 828 (2nd Cir. 1965). In a sales contract, quantity is an essential term. *King v. Krischer Mfg. Co., Inc.*, 220 App.Div. 584, 222 N.Y.S. 66, 68 (1927). To attempt to fix quantity by such terms as 'fair share' is too indefinite. *Varney*

v. Ditmars, 217 N.Y. 223, 111 N.E. 822, 824 (1916)."

The District Court found that the letter of September 16, 1977 (Exhibit B) was consistent with McGrady's testimony with respect to the agreement between the parties. While at first blush, it would seem that a requirement to supply three weeks of menus and recipes and then a week of gourmet recipes and then two weeks of family recipes and single recipes provides for an ascertainable amount, on analysis it turns out to be purely ephemeral.

McGrady analyzed his arrangement with petitioner and testified that the number of recipes had not been agreed upon.

The amount was something that would have to be worked out later, with McGrady, with the publisher and with Pritikin. That would take place over the period of time Roth worked on the book and even afterwards, in editorial discussions. The parties did not really reach agreement until July, 1978, six months after the statute went into effect, when plaintiff delivered the last batch of recipes.

A menu is distinguished from a recipe in that a menu might be a regimen of food or a meal, while a recipe has specific application to a particular item within a meal.

Thus, the number of recipes for a breakfast would depend on the cook's creativity. As McGrady agreed, the statement that there were required recipes for a day was meaningless insofar as numbers were concerned. That would be true of recipes for a week, a month or a year.

Since there was no agreement reached, even according to McGrady, until well into 1978, there was no agreement by which petitioner gave up any rights.

CONCLUSION.

The writ of certiorari should be granted.

Dated: New York, New York
September 1, 1983

Respectfully submitted,

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APPENDIX A.

Opinion of U. S. Court of Appeals, Second Circuit.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 1322—August Term, 1982

(Argued June 2, 1983 Decided June 20, 1983)

Docket No. 83-7013

JUNE ROTH,

Plaintiff-Appellant,

—against—

NATHAN PRITIKIN and PATRICK M. MCGRADY, JR.,

Defendants-Appellees.

Before:

KAUFMAN, PRATT, and GIBSON*,

Circuit Judges.

Appeal by the plaintiff from a judgment entered on an order of the United States District Court for the Southern

* Of the United States Court of Appeals for the Eighth Circuit, sitting by designation.

District of New York, Thomas P. Griesa, *Judge*, finding the plaintiff had no interest in the copyright of a book and dismissing her complaint.

Affirmed.

KAUFMAN, *Circuit Judge*:

Contracting parties often discover they might have gained a more advantageous arrangement than their original bargain if they had the power of clairvoyance. Not infrequently, with the benefit of hindsight, one may come to believe the terms agreed upon at a time past, unfairly

deprived him of the compensation which, because of later events, seems more appropriate.

In the dispute before us, June Roth created certain recipes which were incorporated into what proved to be a best-selling book. She now invokes the Copyright Act of 1978 to challenge a district judge's determination that she entered into a valid contract, accepting $3,000 as full compensation for her labors. The facts are important to the resolution of this issue, and accordingly, we set them forth in some detail.

I

In 1976, Patrick McGrady, a prominent medical writer and free-lance journalist, visited Nathan Pritikin's "Longevity Center" in Santa Barbara, California. The Center offered treatment, based upon Pritikin's diet and exercise plan, for persons suffering from a variety of physical afflictions. After spending almost one month at the clinic, McGrady was impressed with the program's apparent success, and in November 1976 wrote an article for *Woman's Day* magazine discussing Pritikin's nostrums.

McGrady's story sparked a great deal of interest in the publishing community. Accordingly, he received several inquiries urging him to write a book on the subject. In December 1976 McGrady and Pritikin entered into an agreement, pursuant to which McGrady was primarily responsible for writing the book. Pritikin would lend his name and expertise to the endeavor. Publication and distribution rights were sold to Grosset & Dunlop.

The authors realized their tome would benefit from the inclusion of recipes which would assist readers in adhering to the strict dietary requirements of the Pritikin

regimen. Following several unsuccessful encounters with other authors in the Spring of 1977, McGrady approached June Roth, a free-lance writer, specializing in food and health matters. She had previously contributed to a number of cookbooks, and had written several articles on food-related topics. Roth agreed in principle to create the recipes, and McGrady provided her with a list of dietary specifications embodied in the Pritikin program.[1]

McGrady and Roth met on August 30, 1977 to discuss the details of Roth's participation in the endeavor. McGrady asked Roth what compensation she would require, suggesting a price of "several hundred dollars." Roth rejected this offer, and they compromised on a payment of either $1,500 in addition to a portion of the royalties from serialization rights, or, alternatively, a flat fee of $3,000. Roth disputes McGrady's account of the August 30 accord, asserting they agreed to a $3,000 advance on her share of the book's royalties.

On September 16, 1977 McGrady mailed Roth a letter acknowledging his version of the agreement. He stated Pritikin preferred a $3,000 flat fee, and asked her to respond "if this does not accord with your understanding." Several days later McGrady telephoned Roth and

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[1] The list of foods prohibited by the Pritikin diet reads like the shopping list of a typical American family. Roth was directed to omit fats, high-fat foods, salt, whole milk products, cholesterol-rich items, sugars and many prepared foods and condiments from her recipes. Replacing these commonplace items were complex carbohydrates such as whole grains, vegetables and fruits. The emphasis of the regimen was on natural substances, cooked simply, often merely steamed. As one might imagine, one of the shortcomings of a diet plan based upon these strict requirements was the lack of variety in meals. Roth was charged with the difficult task of making the program palatable to the average American.

orally reconfirmed their arrangement. Roth disputes either of these communications was made.

In October 1977 Roth delivered her recipes. She received $3,100 for her labors. An initial check for $1,000 was dated November 11, 1977 and included a notation—"one-third payment for recipes." Two other checks for $1,100 and $1,000 were mailed in March 1978 and March 1979, respectively.

The book, *The Pritikin Program for Diet & Exercise*, was finally published in the Spring of 1979. It became an immediate success and remained on best-seller lists for a full 52 weeks. By the date of trial, Pritikin and McGrady had realized royalties in excess of $1,000,000, and, as one might expect, Roth's pride at the book's favorable reception was tempered by the realization that her financial reward was marginal. She complained to McGrady, and made several requests for additional compensation. Ultimately she refused McGrady's offer of payment of $2,000 beyond the sum she had already earned.

Roth finally filed suit in the Southern District of New York, asserting she had never enter into a valid contract concerning payment for her recipes, and alternatively, if any such agreement had been made, it was rendered invalid because of the subsequent enactment of the Copyright Act of 1978. The defendants answered, claiming she accepted $3,000 as full compensation.

A three-day bench trial was conducted in December 1982. After considering the testimony of the witnesses, including Roth, Pritikin, McGrady, Julian Bach (the literary agent) and others, and viewing the documentary materials submitted by the parties, Judge Griesa delivered an oral opinion. The district judge concluded Roth entered into a binding contract in August 1977, consenting to accept $3,000 in return for creating recipes. Accord-

ingly, the district court determined Roth was a "writer for hire" with no interest in the copyright pursuant to the law extant at the time the agreement was executed. Finally, the judge rejected Roth's claim that the 1978 Act applied retroactively and therefore invalidated the accord concerning Roth's participation in the book.

Roth appeals from the judgment entered on Judge Griesa's order, renewing her original assertions that there was no initially valid agreement, and in any event, that the subsequently enacted Copyright Act altered the rights and obligations of the parties and voided the compact. We find these claims of error to be without merit, and accordingly, we affirm the judgment.

II

Roth's initial challenge may be disposed of briefly. Notwithstanding appellant's attempt to denigrate the district judge's findings of fact, his conclusion that she entered into a lawful contract was fully supported by the evidence adduced at trial, and there is no basis for rejecting it as clearly erroneous. *See* Fed. R. Civ. P. 52(a); *United States* v. *Yellow Cab Co.*, 338 U.S. 338 (1949); *Stafford* v. *International Harvester Co.*, 668 F.2d 142 (2d Cir. 1981).

McGrady's testimony concerning the oral agreement was corroborated by letters mailed to Pritikin discussing the terms of Roth's employment. In addition, the notation on the margin of Roth's first check indicated it was a one-third payment for her services, and appellant did not challenge the validity of this memorandum or attempt to clarify the perceived ambiguity in the terms of her arrangement with McGrady. Moreover, when pressed on cross-examination, Roth admitted there was no explicit

statement by McGrady that the $3,000 represented an advance on royalties, but she merely "construed" their conversation as indicating this was the bargain reached.[2]

In sum, the evidence adduced at trial was inconsistent, and the judge was free to draw conclusions based upon his perception of the witnesses' credibility and demeanor. *Newman* v. *Local 1101, Communication Workers of America, A.F.L.-C.I.O.*, 597 F.2d 833, 836 (2d Cir. 1979). Roth has not met her burden of demonstrating the district court's findings were clearly erroneous, and accordingly, we must decline her invitation to reverse them.

III

We now reach the core legal issue presented in this dispute. The parties agree that if the oral contract between Roth and McGrady is governed by the law in effect in 1977, it was proper, and divested appellant of any rights she might otherwise have possessed to a share of the publication's royalties.[3] The parties disagree, however,

2 The judge's findings were also supported by the testimony of Julian Bach, a witness who had little stake in the outcome of the dispute. Bach stated he spoke with appellant on several occasions in 1980, and although she admitted she had no right to additional compensation, she asked whether Bach thought Pritikin and McGrady might grant her additional remuneration in view of the book's success. In addition, Bach noted a $3,000 fee was not, on the basis of his experience, an unusually meager stipend for a writer of Roth's stature.

3 Roth created the recipes at McGrady's request, *see Siegel* v. *National Periodical Publications, Inc.*, 508 F.2d 909 (2d Cir. 1974), and Pritikin and McGrady retained the right to supervise her work and reject the meal plans at their discretion. *See Scherr* v. *Universal Match Corp.*, 417 f F.2d 497, 500 (2d Cir. 1969), *cert. denied*, 397 U.S. 936 (1970). In the absence of evidence to the contrary, ownership of the copyright would, accordingly, be presumed to lie with the "person at whose instance and expense the work [was] done." *Brattleboro Publishing Co.* v. *Winmill Publishing Corp.*, 369 F.2d 565, 567 (2d Cir. 1966); *see Yardley* v. *Houghton Mifflin Co.*, 108 F.2d 28 (2d Cir. 1939), *cert. denied*, 309 U.S. 686 (1940).

on the significance of the Copyright Act of 1978. Appellant asserts all copyrights are governed by the new Act, and accordingly, her rights as the author of a substantial portion of the book must be determined with reference to this statute. The appellees assert the 1978 Act has no impact upon agreements entered into prior to its effective date. Because we believe the Act's language, its legislative history, and generally applicable rules of statutory interpretation all mandate prospective application of the rules governing work for hire agreements, we reject appellant's contentions.

Pursuant to the new statute, the creator of a "work for hire" has no ownership interest in a copyright. 17 U.S.C. § 201(b). That term is defined in the Act as

> (1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work . . . if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

17 U.S.C. § 101. Except for the requirement that the agreement be memorialized in a writing, this definition would clearly apply to Roth. As we have indicated, however, Roth's understanding with Pritikin and McGrady was not transcribed, and accordingly, she asserts her contribution should not be viewed as a work for hire.

Resolution of this issue, of course, depends on the Act's application to the present dispute. Roth contracted to furnish the recipes in 1977, prior to the statute's enactment. Appellant, however, asserts this date is of little moment, since in her view the Act applies retrospectively. She relies on Section 301:

> On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 [which] . . . come within the subject matter of copyright as specified by sections 102 and 103, *whether created before or after that date* . . . are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(emphasis supplied). The italicized language, Roth claims, demonstrates a clear congressional intent to apply the provisions of the 1978 Act to all copyrights in effect on the date of enactment.

Roth's interpretation of § 301, while imaginative, is wholly unsupported by the congressional intent, as indicated both by the terms of that provision and its legislative history. Fairly read, § 301 merely provides the rights accruing to the owner of a copyright, those "specified in section 106," are defined pursuant to the 1978 Act, rather than prior law. Whoever holds an interest in a copyright on or after January 1, 1978, has a right to the protections afforded by the new statute, although the creative work may previously have been governed by the 1909 Act or the common law. Section 301 does not, however, purport to determine who holds a copyright for works created before January 1978. It merely clarifies the rights of individuals owning copyrights on that date, whomever they may be.

Prior to the enactment of the 1978 Act, copyright interests in published works were controlled by the 1909 Copyright Act. Unpublished material enjoyed virtually perpetual protection under state common law. *See Gold-*

stein v. *California*, 412 U.S. 546 (1973); *Meltzer* v. *Zoller*, 520 F. Supp. 847, 853 (D.N.J. 1981). This dual system proved unwieldy, particularly in view of technological advances which diminished the importance of publication as the principal factor determining which body of law applied. Cognizant of these shortcomings in existing law, Congress passed the 1978 Act to implement a uniform system of copyright protection applicable to all creative works. The statutory language upon which Roth relies merely indicates that all copyrights, whether previously governed by the common law or by the 1909 Act, were thereafter to be controlled by the provisions of the 1978 statute.

The legislative history of § 301 makes clear a congressional intent to preempt previous law and replace the labyrinth of statutory and common law authority with a single, generally applicable federal statute.

> Instead of a dual system of "common law copyright" for unpublished works and statutory copyright for published works, . . . the bill adopts a single system of Federal statutory copyright from creation . . . . Common law copyright protection for works coming within the scope of the statute would be abrogated, and . . . a single Federal system [would be substituted for] the present anachronistic, uncertain, impractical, and highly complicated dual system.

H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 129 (1976), *reprinted in* [1976] U.S. Code Cong. & Ad. News 5659, 5745; *see also* H.R. Conf. Rep. No. 94-1733, 94th Cong. 2d Sess. 78-79 (1976), *reprinted in* [1976] U.S. Code Cong. & Ad. News 5810, 5819-20.

Nothing in the House or Senate reports accompanying the proposed Copyright Act evinces an intention to have

the work for hire provisions retroactively apply. The total absence of consideration of the issue by the drafters would be sufficient to undercut Roth's claim, for it is well-settled "that a retrospective application will not be given a statute . . . unless such be 'the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.' " *Union Pacific R.R. Co.* v. *Laramie Stock Yards Co.*, 231 U.S. 190, 199 (1913) (citations omitted); *see United States* v. *Security Indus. Bank*, 51 U.S.L.W. 4007, 4010 (U.S. Nov. 30, 1982); *Green* v. *United States*, 376 U.S. 149, 160 (1964).

Moreover, the Copyright Act, although passed by Congress on October 19, 1976, was not made effective until January, 1978. It would seem anomalous for the legislature to defer the effective date of the Act if it intended the statute, when implemented, to govern retrospectively. *See Ocean & Atmospheric Science, Inc.* v. *Smyth Van Lines, Inc.*, 446 F. Supp. 1158, 1159 (S.D.N.Y. 1978).

Although the issue raised by Roth appears to be relatively novel, one Circuit Court has commented on the retroactivity of the work for hire standard, and has declined to adopt the position appellant urges this Court to accept. *May* v. *Morganelli-Heumann & Assoc.*, 618 F.2d 1363, 1368 n.4 (9th Cir. 1980). In addition, Professor Nimmer, a noted authority on copyright law, argues in his treatise that the 1978 Act does not affect the ownership rights of persons holding copyrights prior to January 1978. 3 *Nimmer on Copyright*, § 10.03[B][2] (1982) ("[I]t is necessary to determine the identity of the common law copyright owner upon such preemption date in order to determine who succeeded to statutory copyright ownership.")

Although the language of the Act, its legislative history and rules of statutory interpretation are sufficient

answers to Roth's claim, we note, *en passant*, adoption of her interpretation of § 301 would, in addition, raise a serious issue concerning the Act's constitutionality. *See* 1 *Nimmer on Copyright*, *supra*, at § 1.11. An interest in a copyright is a property right protected by the due process and just compensation clauses of the Constitution. *See Loretto* v. *Teleprompter Manhattan CATV Corp.*, 102 S. Ct. 3164 (1982); *Pruneyard Shopping Center* v. *Robins*, 447 U.S. 74, 82 n.6 (1980). The agreement between Roth and the appellees, pursuant to which Roth surrendered any rights she might otherwise have obtained in the copyright, was valid when it was entered into, and a subsequently enacted statute which purported to divest Pritikin and McGrady of their interest in the copyright by invalidating the 1977 agreement could be viewed as an unconstitutional taking. *See, e.g.*, *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393 (1922); *Penn Central Transportation Co.* v. *New York City*, 438 U.S. 104 (1978); *see also* Michelman, *Property, Utility, And Fairness: Comments On The Ethical Foundations of "Just Compensation" Law*, 80 Harv. L. Rev. 1165 (1967). Resolution of this issue is not required for our holding, and will have to wait for an appropriate case.

Moreover, the district court failed to make any findings relevant to this question, and accordingly, we do not decide whether retroactive application would, in fact, violate constitutional restrictions. Even the spectre of a constitutional issue concerning the proper application of the "takings clause", however, is sufficient cause to construe the statute to provide for exclusively prospective relief, particularly in the absence of any clear congressional mandate to the contrary. *United States* v. *Security Indus. Bank*, *supra*, 51 U.S.L.W. at 4010; *Lorillard* v. *Pons*, 434 U.S. 575, 577 (1978); *Crowell* v. *Benson*, 285 U.S. 22, 62 (1932).

We are of the view, therefore, that Roth knowingly and purposefully entered into a contract in 1977. She consented to create recipes for inclusion in a book in return for $3,000. Accordingly, we affirm the district court.

Decision of District Court, Southern District of New York

(428)

JUNE ROTH

v.

NATHAN PRITIKIN and PATRICK M. MCGRADY

82 Civ. 1076
(TPG)

New York, New York
December 22, 1982

Decision of the Court.

The Court: This case has been tried to the Court without a jury. It was agreed that the trial held relates to the basic issues of liability and that if liability were found, there would be a second stage of the trial to determine matters such as the claim for accounting and other matters relating to damages or any other form of monetary relief.

The present statement constitutes the Court's findings of fact and conclusions of law on the issues of liability.

It is my determination that defendants are not liable to plaintiff and that the case should be dismissed. Consequently, there will be no second stage of the trial.

This action relates to a book published in 1979 by

Grosset & Dunlap entitled "The Pritikin Program For Diet and Exercise." The book was by Nathan Pritikin and Patrick M. McGrady, Jr. Messrs. Pritikin and McGrady are the defendants in the action.

(429) The action is brought by Mrs. June Roth. Plaintiff Roth contributed a substantial amount of material which was included in the book, and this material consisted of the bulk of the recipes contained in the book. Certain other recipes were provided by associates of Mr. Pritikin.

However, even these Pritikin recipes were revised and worked over by plaintiff so that it is fair to say that plaintiff made a very major contribution to the book.

The book consists of about 350 pages before appendices, an index, and glossaries.

The section which plaintiff contributed, consisting of a few menus and a large number of recipes, runs from pages 219 to the end of the book before the appendix. That runs through page 351.

The recipes which were revised by plaintiff are contained on pages 124 through 148.

Plaintiff contends that, by virtue of her contribution, she is a co-author or joint author of the book, and is a one-third owner of the book and its copyright.

Defendants contend that they hired plaintiff to provide recipes and revise recipes, and that there was an agreement with her to provide this material and do this work for a flat fee of $3,000.

They contend that this was so-called work for hire, within the meaning of the law, under which plaintiff (430) did not become a copyright owner of this material, and that defendants are the copyright owners of this material, as well as the rest of the book.

Alternatively, defendants contend that even if plaintiff owned the copyright in her material when she originally wrote it, she assigned her copyright to defendants for the flat sum of $3,000.

The basic facts are as follows, Certain crucial conflicts in the testimony will be discussed.

On December 17, 1976, a contract was entered into between Grosset & Dunlap, publishers, and Pritikin and McGrady, as authors, for a book dealing with Pritikin's theories and programs for diet and exercise.

By this time, Pritikin had become well known for the ideas about diet and exercise; McGrady had studied the Pritikin methods and had written an article about them.

McGrady is an author who had become interested in various subjects connected with physical health and the medical profession.

The collaboration for the book involved Pritikin supplying his expertise and ideas and McGrady supplying at least a great deal of the writing.

It was recognized from the outset that recipes would be needed for inclusion in the book in order to translate certain of the Pritikin theories into terms which (431) a reader could use in carrying out the theories.

Pritikin resides in California, McGrady resided, at least part time, in New York. McGrady inquired about who could supply recipes and was referred to Mrs. Roth. They met on August 30, 1977.

There is a conflict between the testimony of Mrs. Roth and McGrady about what occurred at the meeting. According to both, there was a ready agreement to have Mrs. Roth undertake preparation of recipes. It was understood that these recipes would need to conform to certain strict requirements of Pritikin's dietary concepts. For instance, the recipes would need to eliminate fats, regular sugar, etc. However, Mrs. Roth was willing to undertake the project.

The conflict in testimony arises with respect to the question of compensation and rights in the book. Mrs. Roth has testified that she insisted on an advance and a portion

of the book, as she puts it. She also says that she insisted on being listed on the cover of the book.

According to McGrady, two alternative concepts were discussed. The first alternative was that she would be paid, Mrs. Roth would be paid $1,500 and would have the right to a portion of any receipts from magazine articles which were taken from the book and included some of her recipes. Another alternative concept was a flat fee of (432) $3,000.

According to McGrady, the meeting ended with the understanding that Pritikin had to approve whatever arrangement was made and that Mrs. Roth preferred the flat fee of $3,000, but would be willing to accept the other alternative.

According to McGrady, there was no request by Mrs. Roth to have her name on the cover.

According to Mrs. Roth, the meeting ended up with the understanding that McGrady would present to Pritikin her request for a $3,000 advance, future rights to a portion of the book and the right to have her name on the cover.

According to Mrs. Roth, she went to work on the recipes immediately and delivered the recipes in early October.

According to her, no agreement on her rights and compensation was reached. In other words, according to her testimony, she supplied the material but there was no agreement between the partes as to her rights and compensation.

According to her tetimony, her insistence on the terms she allegedly requested was never responded to with a definite yes or no, and there was simply no agreement.

According to McGrady, he checked with Pritikin, Pritikin agreed to the flat fee of $3,000, and sometime (433) in September, McGrady, according to his testimony, confirmed orally to Mrs. Roth that the payment would be a flat fee of $3,000.

McGrady wrote Pritikin on September 9, 1977, outlining, among other things, the two alternative compensation proposals that he has testified about, and asking for Pritikin's views.

According to McGrady's testimony, he also wrote Mrs. Roth on September 16th confirming the two alternative proposals, and saying that these were being submitted to Pritikin.

Copies of the September 9th and September 16th letters are in evidence.

Mrs. Roth denies receiving the September 16th letter. Mr. McGrady testified that his oral confirmation of the $3,000 alternative was made shortly after September 16th.

In any event, as I have said, Mrs. Roth furnished the recipes she was requested to provide, and she did this in early October as a result of extensive work carried out by her between late August and early October.

Subsequently she received certain recipes from Pritikin's colleagues and worked over these so that they could be used in the book.

She also worked with an editor at Grosset & Dunlap on the portion of the book for which she was (434) responsible.

The book was published in the spring of 1979. It went on to the best seller list almost immediately and remained there for a year.

Mrs. Roth was paid the $3,000 in three installments. On November 11, 1977, she received a check for $1,000 from McGrady. It contained a notation as follows: "One-third payment for recipes."

Mrs. Roth has testified that she paid no particular attention to this notation, although she did object to McGrady that she was not receiving the full $3,000. Her testimony is she was complaining about failure to receive the full $3,000 advance.

She received a second check on March 15, 1978. This happened to be for $1,100. The reason for the extra $100 is not clear and there is no need to go into this detail for present purposes.

She received a third check for $1,000 on March 31, 1979.

As I said earlier, the book was published in the spring of 1979 and was a best seller. Pritikin and McGrady had received a $100,000 advance from the publisher. They have earned total royalties, including the advance, of approximately $1 million.

Mrs. Roth's testimony is that she first received (435) the book or a copy of the book in December 1979. The events occurring thereafter are the subject of conflicting testimony between Mrs. Roth, on the one hand, and Mr. McGrady and the authors' literary agent, Julian Bach, on the other hand.

Mrs. Roth has testified that when she saw the book in December 1979, she was shocked and told McGrady that she strongly objected to her name not being included on the cover and would expect to have her name included on the cover of the paperback.

Shortly thereafter, she saw that there was no mention of her name on the cover of the paperback.

She has testified that at certain times after December 1979, she requested additional compensation from McGrady, and failing in this request, she discussed the matter with the agent, Julian Bach.

The meaning of her testimony about her talks with McGrady is not entirely clear. However, for present purposes, I will assume that this testimony can be interpreted to indicate that she was requesting to be considered a co-author and was asking for a share of the royalties.

According to her testimony, she was always (436) put off with some statement that the matter would be considered.

When was the suit filed?

Mr. Haydon: February 24th or 25, 1981, your Honor.

The Court: Failing to receive satisfaction, she brought suit in February 1981.

McGrady's testimony is that beginning sometime after December 1979, there were several occasions when Mrs. Roth asked him as a favor for more money, specifically saying that she recognized she was not entitled to anything, but asking for a favor because of the great success of the book.

According to McGrady's testimony, in each instance, he would say she was entitled to more money, in the sense of being willing to do her a favor. He offered, according to his testimony, to double the amount of payment and pay approximately another $3,000.

On each such occasion, according to Mr. McGrady she would say that she wanted the money from Pritikin, that she regarded McGrady as a friend, did not want his money, and always insisted that she would take no legal action. He recalls one instance in 1980 where she did mention specifically a percentage of the royalties in some (437) fashion, and McGrady said that that would not be possible.

McGrady has testified that Mrs. Roth's communications with him were solely in terms of asking for a favor despite the fact that she was not legally entitled to anything more than what she had received.

Julian Bach also testified that Mrs. Roth approached him to see if she might receive more money for her recipes, although she recognized she did not have a legal right to it.

Bach agreed to refer the matter to Pritikin, and indeed, on November 19, 1980, he wrote Pritikin. Among the statements in the November 19, 1980 letter is one to the effect that Mrs. Roth admits that she has no contract that would entitle her to any further payments.

This brings me to the legal conclusions.

A new copyright statute became effective January 1, 1978, and consequently, to the extent that the new statute might alter the substantive rights of the parties, it does not apply.

My reference hereafter to the law are to the law which applied prior to January 1, 1978.

In the copyright field there is a concept of work for hire. If an author hires to supply certain materials for inclusion in a book, and it is understood that this other person is not going to be one of the authors, (438) and is not going to be one of the owners of the book or have rights to the book, the arrangement is referred to as one for work for hire.

Two of the factors which are considered in determining whether something is work for hire or not are as follows:

The first such factor is whether the author of the main part of the book or the main author of the book induced or originated the idea of the other person doing the work.

Another is whether the main author has the right to control what the other person was writing and providing.

These are only two of the factors which can be considered and should be considered, depending on the circumstances of the case, the factors are referred to in cases in the Second Circuit and elsewhere.

Defendants concede in this case that they have the burden of showing that the situation is one relating to work for hire.

A further feature of the law, at least prior to January 1, 1978, was that once there was a finding of work for hire, there is a rebuttal presumption that the copyright belongs to the so-called employer or the main author.

As an alternative theory to the work for hire (439) theory, defendants contend that even if Mrs. Roth was the

author of her recipes when she wrote them and had a copyright in them as of that time, her transfer of the recipes and her other work to Pritikin and McGrady constituted an assignment of her copyright.

We have had a discussion as to who has the burden of proof one way or the other on that issue, and the Court has not been presented with authorities conclusive one way or the other. But this is not of great moment in view of the circumstances of my overall rulings.

I hold and conclude that the defendants have proved by a preponderance of the evidence that there was an agreement for Mrs. Roth to supply recipes of her own and to work on recipes of the Pritikin organization for a flat fee of $3,000.

I have noted the sharp conflict of testimony between Mrs. Roth and McGrady. In my view, the balance tips in favor of the defendants on the issue in view of the following circumstances:

There are the letters of September 9th and September 16, 1977. Even if Mrs. Roth did not receive the September 16, 1977 letter, these letters do at least constitute contemporaneous records of discussions in terms consistent with the testimony of McGrady.

Another circumstance is the letter of Julian (440) Bach dated November 19, 1980 to Mr. Pritikin, which is consistent with his version of conversations at that time with Mrs. Roth.

Another circumstance is the failure of Mrs. Roth to make any memorandum of her understanding of the state of the negotiations, her failure to take any steps to obtain a contract of the kind she asserts she requested, giving her a right to ownership in the book, her failure to make any complaint or follow-up request for such rights from the time of her discussions in the fall of 1977, all the way to

the winter of 1979, months after the book had been published.

Even according to her own testimony, there was this two-year lapse during which time she did nothing to assert her rights or the rights she alleges she was insisting on.

She is a professional writer. She is now the president of a writers' organization, she is familiar with practices in the field of writing books, and if she indeed was expecting to have a share in the copyright and ownership of the book, she took no effective steps to assert that claim, for a very long period of time.

Unfortunately, this makes it difficult to accept her version of the facts as distinct from the defense version.

(441) The conclusion I have reached on the facts leads me to the further conclusion that this was a work for hire in which Mrs. Roth obtained no copyright, the copyright vesting solely and exclusively in Pritikin and McGrady.

For the reasons I have stated, plaintiff's complaint must be dismissed and judgment will be entered in favor of defendants.

I will expect the judgment to be settled and if we can, have this disposed of next week.

There are no counterclaims, I take it.

Mr. Haydon: No, your Honor.

The Court: So it's just a simple judgment dismissing the complaint.

All right.

Judgment of U.S. District Court, Southern District of New York.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JUNE ROTH,

Plaintiff,

against

NATHAN PRITIKIN and PATRICK M. MCGRADY, Jr.,

Defendants.

81 Civ. 1076 (TPG)

This action having come on for trial before the Hon. Thomas P. Giesa, United States District Judge, sitting without a jury, on December 20, 1982, and all the issues having been duly tried by counsel for the plaintiff and counsel for both defendants, and a decision and opinion having been duly rendered by the Court,

It is hereby Ordered and Adjudged,

That the plaintiff take nothing, that the action be dismissed on the merits, and that defendants Nathan Pritikin and Patrick M. McGrady, Jr. recover from the

plaintiff their respective costs and disbursements, to be taxed by the Clerk of the Court.

Dated: New York, New York
December 30, 1982

THOMAS P. GRIECA
U.S.D.J.

Judgment Entered 12/30/82
RAYMOND F. BURCHARDT

U. S. District Court
Filed
Dec. 30 1927
S.D.N.Y.

Exhibit A—Letter Dated September 16, 1977.

September 16, 1977

Mrs. June Roth
1057 Oakland Ct.
Teaneck N.J. 07666

Dear June,

This letter will confirm our understanding whereby you will supply Nathan Pritikin and me with three weeks of menus and recipes consonant with the Pritikin Diet, and to provide before the end of September, 1977 a week of gourmet recipes, and within the following six weeks two weeks of family recipes and siggees' recipes.

You have proposed two means of compensation for your work. The first would be payment of $3000 for all rights to the recipes. The second would be payment of $1500, plus one-half of all monies accruing from magazine or newspaper serialization of the book—in direct proportion to the actual space occupied in the excerpts by the recipes. (Thus, if *Woman's Day* paid $10,000 for serialization of the book, and 40% of the space was devoted to your recipes, you would receive $2000 from that serialization.)

Which of these methods we shall use shall be decided by Nathan Pritikin, and I shall inform you of his decision as soon as I hear from him on the matter.

Payment of your baseline compensation ($1500 or $3000) will be made by us from our shares of the advance, payable in three equal installments from the next three payments from our publisher, Grosset & Dunlap.

If this does not accord with your understanding of our agreement, please let me know promptly.

Warmest regards,

APPENDIX B.

Copyright Application.

LIBRARY OF CONGRESS

Copyright Office of the United States

WASHINGTON, D.C.

THIS IS TO CERTIFY THAT THE ATTACHED IS A TRUE COPY OF THE APPLICATION ON FILE IN THE COPYRIGHT OFFICE REGISTRATION NUMBER

TX 263-340

IN TESTIMONY WHEREOF, THE SEAL OF THIS OFFICE IS AFFIXED HERETO ON

February 3, 1982

David L. Ladd

REGISTER OF COPYRIGHTS

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE,

(1) Title

TITLE OF THIS WORK:

THE PRITIKIN PROGRAM FOR DIET & EXERCISE

If a periodical or serial give: Vol. ..... No. ..... Issue Date .....

PUBLICATION AS A CONTRIBUTION: (If this work was published as a the collective work in which the contribution appeared.)

Title of Collective Work: .....

REGISTRATION NUMBER

TX 263-340

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EFFECTIVE DATE OF REGISTRATION

(Month) JUN (Day) 5 (Year) 1979

A 28

E CONTINUATION SHEET (FORM TX/CON)

PREVIOUS OR ALTERNATIVE TITLES:

tribution to a periodical, serial, or collection, give information about

Vol. ..... No. ..... Date ..... Pages .....

(THIS PAGE INTENTIONALLY LEFT BLANK)

(2)
Author(s)

IMPORTANT: Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). If any part of this work was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates blank.

1

NAME OF AUTHOR: Nathan Pritikin, co-author

DATES OF BIRTH AND DEATH: Born ..... (Year) Died ..... (Year)

Was this author's contribution to the work a "work made for hire"? Yes..... No ..X..

AUTHOR'S NATIONALITY OR DOMICILE: Citizen of USA (Name of Country) or Domiciled in ..... (Name of Country)

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK: Anonymous? Yes..... No ..X.. Pseudonymous? Yes..... No ..X..

AUTHOR OF: (Briefly describe nature of this author's contribution) Co-author of entire work

If the answer to either of these questions is "Yes," see detailed instructions attached.

2

NAME OF AUTHOR: Patrick McGrady, co-author

DATES OF BIRTH AND DEATH: Born ..... (Year) Died ..... (Year)

Was this author's contribution to the work a "work made for hire"? Yes..... No.....

AUTHOR'S NATIONALITY OR DOMICILE: Citizen of USA (Name of Country) or Domiciled in ..... (Name of Country)

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK: Anonymous? Yes..... No ..X.. Pseudonymous? Yes..... No ..X..

AUTHOR OF: (Briefly describe nature of this author's contribution) Co-author of entire work

If the answer to either of these questions is "Yes," see detailed instructions attached.

3

NAME OF AUTHOR:

DATES OF BIRTH AND DEATH: Born ..... (Year) Died ..... (Year)

Was this author's contribution to the work a "work made for hire"? Yes..... No.....

AUTHOR'S NATIONALITY OR DOMICILE: Citizen of ..... (Name of Country) or Domiciled in ..... (Name of Country)

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK: Anonymous? Yes..... No..... Pseudonymous? Yes..... No.....

AUTHOR OF: (Briefly describe nature of this author's contribution)

If the answer to either of these questions is "Yes," see detailed instructions attached.

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3 Creation and Publication	YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED: Year...1978... (This information must be given in all cases)
4 Claimant(s)	NAME(S) AND ADDRESS(ES) OF COPYRIGHT CLAIMANT(S): Nathan Pritikin and Patrick McGrady c : Julian Bach Literary Agency, Inc. : East 48th Street New York, NY 10017
	TRANSFER: (If the copyright claimant(s) named here in space 4 are differ claimant(s) obtained ownership of the copyright.)

DATE AND NATION OF FIRST PUBLICATION:

Date January 15, 1979
(Month) (Day) (Year)

Nation USA
(Name of Country)

(Complete this block ONLY if this work has been published)

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ent from the author(s) named in space 2, give a brief statement of how the

ANUFACTURERS AND LOCATIONS: (If this is a published work consisting preponderantly of nondramatic literary material in English, the law ay require that the copies be manufactured in the United States or Canada for full protection. If so, the names of the manufacturers who performed cer- n processes, and the places where these processes were performed must be given. See instructions for details.)

NAMES OF MANUFACTURERS	PLACES OF MANUFACTURE
L. R. Donnelly & Sons Co.	1009 Sloan St., Crawfordsville, IN 47933

(7) Manufacturing

EPRODUCTION FOR USE OF BLIND OR PHYSICALLY-HANDICAPPED PERSONS: (See instructions)

- Signature of this form at space 10, and a check in one of the boxes here in space 8, constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

a ☒ Copies and phonorecords b ☐ Copies Only c ☐ Phonorecords Only

(8) License For Handicapped

EPOSIT ACCOUNT: (If the registration fee is to be charged to a eposit Account established in the Copyright Office, give name and mber of Account.)

Name .....
Account Number .....

CORRESPONDENCE: (Give name and address to which correspondence about this application should be sent.)

Name: Grosset & Dunlap, Inc.
Address: 51 Madison Avenue
New York, NY 10010 Att. Louise Bates

(9) Fee and Correspondence

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ERTIFICAT ON: * . he undersigned, hereby certify that I am the: (Check one)

☐ author ☐ other copyright claimant ☐ owner of exclusive right(s) ☐ authorized agent of: Nathan Pritikin and Patrick McGrady
(Name of author or other copyright claimant, or owner of exclusive right(s))

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Handwritten signature: (X) Louise Bates

Typed or printed name: Louise Bates Date: 4/10/79

10 Certification (Application must be signed)

Crosset & Dunlap, Inc.
(Name)
51 Madison Avenue
(Number, Street and Apartment Number)
New York, NY 10010 Attention: Louise Bates
(City) (State) (ZIP code)

MAIL CERTIFICATE TO
05 JUL 1979
(Certificate will be mailed in window envelope)

11 Address For Return of Certificate

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17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1978-260-082/8

Rev 1978 - 100,000

APPENDIX C.

Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JUNE ROTH,

Plaintiff,

v.

NATHAN PRITIKIN and PATRICK M. MCGRADY, Jr.,

Defendants.

The Plaintiff, JUNE ROTH, by her attorney, ROBERT A. ROTH, complaining of the above-named Defendants, alleges as follows:

1. JURISDICTION, VENUE AND NATURE OF CLAIM

1.1 This is an action for a Declaratory Judgment as to ownership of a Copyright, protected under Title 17 of the United States Code, and for an accounting of profits from the licensing of a copyrighted work by the Defendants, and for a money judgment for one-third of said profits from the licensing of said copyrighted work.

TX 263-340

EXAMINED BY: .....

CHECKED BY: RA-B

CORRESPONDENCE:

☐ Yes

DEPOSIT ACCOUNT FUNDS USED:

☐

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED ADDITIONAL SPACE,

VIOUS REGISTRATION:

- Has registration for this work, or for an earlier version of this work, already been made in the Copyright
- If your answer is "Yes," why is another registration being sought? (Check appropriate box)

☒ This is the first published edition of a work previously registered in unpublished form.
☒ This is the first application submitted by this author as copyright claimant.
☐ This is a changed version of the work, as shown by line 6 of this application.

- If your answer is "Yes," give: Previous Registration Number .....

MPILATION OR DERIVATIVE WORK: (See instructions)

PREEXISTING MATERIAL: (Identify any preexisting work or works that this work is based on or incor

{ .....
{ .....

MATERIAL ADDED TO THIS WORK: (Give a brief, general statement of the material that has been ad

{ .....
{ .....

	APPLICATION RECEIVED: 26 JUN 1979	FOR COPYRIGHT OFFICE USE ONLY
	DEPOSIT RECEIVED: 26 JUN 1979 26 JUN 1979	
	REMITTANCE NUMBER AND DATE 264031 JUN 26 79	

USE CONTINUATION SHEET (FORM TX. CON)

Office? Yes ..... No	**5** Previous Registration
Year of Registration	
	6 Compilation or Derivative Work
porates.)	
.....	
ded to this work and in which copyright is claimed.)	
.....	

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1.2 Jurisdiction in the Federal District Court is founded upon 28 U.S.C. 1338, since this action arises under the Federal Copyright Laws.

1.3 Jurisdiction in the Federal District Court is also founded upon 28 U.S.C. 1332, since the matter in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs, and is between citizens of different states.

1.4 The Southern District of New York is the proper venue of this action, since both Defendants employ an agent, Julian Bach Literary Agency, Inc., with offices at 747 Third Avenue, New York, New York, within the Southern District of New York, and since the Defendants have licensed the copyrighted work to be published by several publishers, magazines, newspapers, book clubs and other media, all with offices located within the Southern District of New York, and since said publishers are presently in possession of undistributed royalties accrued to the authors of said copyrighted work.

2. PARTIES

2.1 Plaintiff, JUNE ROTH, is a professional writer and author of 27 published books in over 40 different editions, on the subjects of food, health and cooking, and is also a nationally syndicated newspaper columnist and a writer for national magazines.

2.2. Defendant NATHAN PRITIKIN is the founder and director of the Longevity Center and the Pritikin Research Foundation. He maintains offices at the Longevity Center at 1121 East Cabrillo Blvd., Santa Barbara, California, and is also a resident of Santa Barbara, California.

2.3 Defendant PATRICK M. McGRADY, Jr. is a professional writer who has published several books and numerous magazine articles. He presently resides at Star Route No. 1, Port Ludlow, Washington.

3. CAUSE OF ACTION

3.1 The three above-mentioned parties are the co-authors of a book entitled *The Pritikin Program for Diet & Exercise,* hereinafter referred to as the "BOOK", which was published by Grosset & Dunlap in May 1979, and also in paperback by Bantam Books in June 1980, and has also been published in book club editions by Literary Guild in November 1979 and by Macmillan Book Club in February 1980, and has been excerpted, digested and serialized in *Family Circle* magazine in November 1978, in *Cosmopolitan* magazine in November 1979, in *Book Digest* between September 1979 and December 1979, in *The New York Post* between April and May of 1979, and by United Features Syndicate between July and December of 1979, and has been serialized by and licensed to other magazines, newspapers and media, not presently known to the Plaintiff. The BOOK was on the Best Seller Lists of the *New York Times* and *Publisher's Weekly* for over one year.

3.2 The Plaintiff developed and wrote the recipe section that comprises over one-third of the BOOK.

3.3 For her work on said BOOK, Plaintiff has received $3,000.00 to date.

3.4 Plaintiff did not make any written contract in regard to said BOOK.

3.5 Plaintiff wrote her part of the BOOK at the request of Defendant Patrick McGrady, with the full knowledge and consent of Defendant Nathan Pritikin.

3.6 Two Defendants have obtained a copyright on the BOOK in their own names, and did not include the name of the Plaintiff as a co-author on the cover, the title page or the copyright.

3.7 The Defendants and/or their agents have licensed the authors' rights in the BOOK to numerous publishers, book clubs, magazines, newspapers, syndicates and other media, and have repeatedly licensed the specific portion of the book written by the Plaintiff for republication and syndication.

3.8 Defendants have received, or are due to receive advances and royalty payments for the use of said licensed rights, in a total amount that is not presently known to the Plaintiff, but which is known to Defendants or their agents, or can be determined by them with reasonable diligence.

3.9 The amount of advances and royalties received or accrued to date is certainly in excess of $400,000.00, and upon information and belief is in excess of $800,000.00.

3.10 Defendants have failed and refused to date to make any accounting of their profits to Plaintiff, and have failed and refused to give Plaintiff any exact figures as to the royalty earnings of the BOOK.

3.11 As one of three co-authors, who has written over one-third of the BOOK, the Plaintiff is entitled to ownership of one-third of the copyright, and is also entitled to

one-third of the profits and royalties received by or due to the authors of said BOOK.

3.12 Plaintiff is entitled to an accounting of all of the advances, profits and royalties received, earned or due to be received in connection with said BOOK and all related publications, serializations and other rights associated with said BOOK.

WHEREFORE, PLAINTIFF PRAYS for a Declaratory Judgment declaring the Plaintiff to be the owner of one-third of the copyright of the BOOK, and for a judgment requiring the Defendants to account to the Plaintiff for all of their advances, profits and royalties received, earned or due to be received in connection with said BOOK and any and all related publications, serializations and other rights associated with said BOOK, and for a money judgment for one-third of all of the advances, profits and royalties received by or due to the authors of said BOOK, which amount is not presently known to the Plaintiff, but which is in excess of $133,000.00, and which upon information and belief is in excess of $266,000.00, to date, plus interest, costs, fees and expenses of this action.

Respectfully submitted,

ROBERT A. ROTH
Attorney for Plaintiff
1775 Broadway
New York, N.Y. 10019
(212) 757-3111

Answer of Defendant Nathan Pritikin.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JUNE ROTH,

Plaintiff,

against

NATHAN PRITIKIN and PATRICK M. MCGRADY, Jr.,

Defendants.

81 Civ. 1076 (TPG)

Defendant Nathan Pritikin, by his attorneys Milgrim Thomajan Jacobs & Lee P.C., for his answer:

1.1 Denies the averments of paragraph 1.1 of the complaint.

1.2 Denies the averments of paragraph 1.2 of the complaint.

1.3 Denies the averments of paragraph 1.3 of the complaint.

1.4 Denies the averments of paragraph 1.4 of the complaint, except admits that the Southern District of New York is the proper venue of this action.

PARTIES

2.1 Denies knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 2.1 of the complaint.

2.2 Admits the averments of paragraph 2.2 of the complaint.

2.3 Denies knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 2.3 of the complaint.

CAUSE OF ACTION

3.1 Denies each of the averments in paragraph 3.1 of the complaint.

3.2 Denies the averments of paragraph 3.2 of the complaint.

3.3 Admits the averments of paragraph 3.3 of the complaint.

3.4 Denies knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 3.4 of the complaint.

3.5 Denies the averments of paragraph 3.5 of the complaint.

3.6 Admits the averments of paragraph 3.6 of the complaint.

3.7 Denies the averments of paragraph 3.7 of the complaint, except to admit that Mr. Pritikin or his agent has licensed the authors' rights in the Book, to various publishers, book clubs, magazines and newspapers.

3.8 Denies knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 3.8 of the complaint, except admits that he has received advances and royalty payments.

3.9 Admits the averments of paragraph 3.9 of the complaint.

3.10 Admits the averments of paragraph 3.10 of the complaint.

3.11 Denies the averments of paragraph 3.11 of the complaint.

3.12 Denies the averments of paragraph 3.12 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4.1 Prior to the commencement of the within action and on or about November, 1977, plaintiff agreed to accept the sum of $3,000.00 as full payment for her services and rights in connection with the book which is the subject of this action and said amount has been paid.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5.1 Plaintiff had notice of all the facts, of all the acts, of all the circumstances herein and nevertheless refrained from commencing this action until March of 1981, and has thereby been guilty of such laches as should in equity bar said plaintiff from maintaining this action.

WHEREFORE, defendant, Nathan Pritikin, prays for judgment dismissing with the Complaint against him, together with the costs and disbursements of this action.

Dated: New York, New York
June 1, 1981

MILGRIM THOMAJAN JACOBS & LEE
Professional Corporation

By (Illegible)
A Member of the Firm
Attorneys for Defendants
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 867-6660

Answer of Defendant Patrick M. McGrady, Jr.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JUNE ROTH,

Plaintiff,

against

NATHAN PRITIKIN and PATRICK M. MCGRADY, Jr.,

Defendants.

81 Civ. 1076 (TPG)

Defendant, Patrick M. McGrady, Jr. by his attorneys, Shapiro, Shiff, Beilly, Rosenberg & Fox, answering the complaint of the plaintiff, states as follows:

JURISDICTION, VENUE AND NATURE OF CLAIM:

FIRST: Denies each and every allegation contained in paragraphs designated "1.3" and "1.4" of the complaint except to admit that the Southern District of New York, is the proper venue of this action.

SECOND: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "1.1" and "1.2" of the complaint.

PARTIES

THIRD: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "2.1" and "2.2" of the complaint.

FOURTH: Admits the paragraphs marked "2.3" of the complaint.

CAUSE OF ACTION

FIFTH: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "3.8" of the complaint.

SIXTH: Denies each and every allegation contained in paragraphs designated "3.1", "3.2", "3.4", "3.5", "3.7", "3.11" and "3.12" of the complaint.

SEVENTH: Admits paragraphs designated "3.3", "3.6", "3.9" and "3.10" of the complaint.

AS AND FOR A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE:

EIGHTH: Prior to the commencement of the within action and on or about November, 1977, plaintiff agreed to accept the sum of $3,000.00 as the agreed upon payment for her alleged rights herein, and said amount has been paid.

AS AND FOR A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE:

NINTH: Plaintiff had notice of all the facts, of all the acts, of all the circumstances herein and nevertheless refrained from commencing this action until March of 1981, and has thereby been guilty of such "laches" as should in equity bar said plaintiff from maintaining this action, which action allegedly accrued in 1977.

AS AND FOR A THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE:

TENTH: The alleged agreement under which plaintiff is seeking the relief complained of herein, was by its nature and terms required to be in writing, and said alleged agreement or any note or memorandum thereof was never made or requested by the plaintiff in writing, or ever subscribed by the party to be charged therewith, or his lawful agent as required by law and accordingly, said defendant herewith pleads the statute of frauds as a complete defense herein.

AS AND FOR A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE:

ELEVENTH: On or about October and November of 1977, defendants paid and delivered to the plaintiff the sum of $1,000.00 as part payment of the sum of $3,000.00 and the balance of $2,000.00 was paid to the plaintiff after numerous conversations in which, plaintiff had negotiated with defendants and said plaintiff accepted the same in full satisfaction and discharge of any amount due her under the alleged contract set forth in the complaint and accordingly, there is in fact and in law an "Accord and Satisfaction."

AS AND FOR A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE:

TWELFTH: The alleged agreement referred to in the complaint herein is void for want of any consideration for said agreement by reason of all the facts and circumstances contained herein.

AS AND FOR A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE:

THIRTEENTH: Plaintiff fails to state a cause of action.

WHEREFORE, the defendant, Patrick M. McGrady, Jr., hereby respectfully demands judgment dismissing the complaint herein, together with all costs and disbursements of this action, plus all attorneys' fees and all other costs as may be provided by the Court.

Dated: New York, New York
May 21, 19871

SHAPIRO, SHIFF, BEILLY, ROSENBERG & FOX

by STANLEY N. ALBERT
Attorneys for Defendant Patrick M. McGrady Jr.
225 Broadway
New York, N.Y. 10007
(212) 267-9020
File No. S-"A" 9448

To:

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Attorney for Plaintiff
1775 Broadway
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Milgrim, Thomajan, Jacobs & Lee, P.C.
By George L. Graff, Esq.
Attorneys for Defendant Nathan Pritikin
405 Lexington Avenue
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